

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NIKI FRENCHKO,) Case No. 4:23-cv-781
)
Plaintiff,)
)
vs.) Cleveland, Ohio
) Wednesday, May 3, 2023
PAUL MONROE, et al.,)
)
Defendants.)

TRANSCRIPT OF HEARING PROCEEDINGS
BEFORE THE HONORABLE J. PHILIP CALABRESE
UNITED STATES DISTRICT JUDGE

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produced with computer-aided transcription.

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WEDNESDAY, MAY 3, 2023

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(Proceedings commenced at 9:33 a.m.)

- - -

THE COURT: Good morning.

This is Case Number 4:23-cv-781.

Counsel, will you please state your appearances for
the record.

MR. MILLER-NOVAK: Matt Miller-Novak on behalf
of Commissioner Frenchko.

MR. BETRAS: Attorney Dave Betras on behalf of
Commissioner Niki Frenchko.

THE COURT: And I'll note that Commissioner
Frenchko is present with you as well.

Who do we have on the defense side?

MR. DOWNEY: Good morning, Your Honor.

It's Dan Downey and Helen Sudhoff, and we're here on
behalf of Sheriff Monroe, Trumbull County, and then former
Commissioner Fuda and Commissioner Cantalamessa.

MR. YOSOWITZ: Good morning.

This is Andrew Yosowitz. I'm here on behalf of
Sergeants Harold Wix and Robert Ross.

THE COURT: Thank you.

So I have three items of business to address this
morning.

1 So the first is that last month the Court conducted a
2 hearing on plaintiff's motion for a temporary restraining
3 order. The defendants at that point, to my knowledge, had
4 not been served, so you were under no formal obligation to
5 appear. But I will tell you, I've been on the bench for
6 almost four years between state court and federal court,
7 before that I practiced for almost 20 years, I have never
8 once even heard of defendants not appearing in response to a
9 motion for temporary restraining order. You're not off to a
10 good start.

11 Second, I want to talk about discovery. Generally
12 speaking, I don't think anybody here has much question about
13 the facts that bring you here. As a general proposition,
14 this dispute should not involve that much discovery.
15 Everyone understands the circumstances why you're here very
16 well.

17 That said, I don't doubt that each of you will want
18 some discovery. What you need to understand is that
19 discovery is almost always burdensome, expensive,
20 time-consuming, and contentious. It tends to create other
21 disputes that take over the life of the case and distract
22 from the merits of the underlying dispute. That's
23 particularly true in a case like this where the allegations
24 necessitate discovery from electronically-stored information
25 and cell phones in particular. You would think -- I at

1 least would think -- that extracting data from cell phones
2 is relatively routine these days. I'm here to tell you that
3 in my experience it is not. It's not that straightforward,
4 and it's fraught with peril.

5 And that takes me to one of the issues that came up at
6 the hearing on the temporary restraining order. I directed
7 plaintiff to serve subpoenas for the cell phone carriers of
8 each of the defendants, so I want the defendants to identify
9 now who your cell phone carriers are so that the plaintiffs
10 can carry out my direction to them from last month.

11 Sheriff, who's your cell phone carrier during the
12 relevant time period?

13 MR. ROSS: AT&T.

14 THE COURT: For your work and personal phones,
15 all devices?

16 MR. ROSS: AT&T.

17 THE COURT: Thank you, sir.

18 For the commissioners?

19 MR. MAURO: AT&T as well.

20 THE COURT: All devices?

21 MR. MAURO: Yes.

22 THE COURT: Sergeants?

23 MR. ROSS: FirstNet through AT&T.

24 MR. WIX: Sergeant Harold Wix, AT&T FirstNet.

25 THE COURT: Is there --

1 MR. FUDA: Commissioner Fuda, T-Mobile.

2 THE COURT: Thank you. My apologies.

3 MR. FUDA: That's okay.

4 THE COURT: I was about to ask if there was
5 anyone I was missing.

6 Mr. Miller-Novak, is there anyone I'm missing in that
7 regard?

8 MR. MILLER-NOVAK: No, Your Honor. But I
9 think we'll probably also need their cell phone numbers. I
10 can understand if they don't want to put them on the record,
11 but if they're e-mailed to me so we can maintain their
12 privacy.

13 THE COURT: Provide the applicable numbers,
14 personal and work numbers, before you leave today to
15 Mr. Miller-Novak.

16 My direction to plaintiff's counsel is no later than a
17 week -- I'm sorry -- no later than Monday, May 8th, you're
18 to prepare subpoenas and provide the notice that Rule 45
19 requires.

20 Defendants, you have until Friday, May 12th, to make
21 any objections you might have to those subpoenas. At that
22 point if you have any disputes over the subpoenas or
23 retrieving that data and information from the carriers that
24 you cannot resolve, I'm referring you to my civil standing
25 order. It's available on the Court's website. I have a

1 process outline there for the resolution of discovery
2 disputes. You may not file anything under that process
3 until you comply with the terms of that order.

4 I'm expecting you to resolve any disputes to the
5 extent defendants have objections, but I expect that cell
6 phone data to be provided. Of course they are subject to
7 reasonable protections for privacy and the like. And I
8 don't expect that plaintiff will ask for what she's not
9 entitled to, but if you have any disputes over that that you
10 reach impasse on, the week after Friday, May 12th, that
11 following week, I will expect a phone call from you in
12 compliance with my order. I will be in touch with you
13 within 24 hours, in all likelihood, and we will get that
14 matter resolved so as not to delay it.

15 Is that all clear, everyone?

16 MR. DOWNEY: Yes, Your Honor.

17 MR. YOSOWITZ: Yes, Your Honor.

18 THE COURT: I'm determined, among other
19 things, not to delay discovery in this case.

20 Defendants, I assume that you will file a Rule 12
21 motion. Defendants almost always do. That's fine, that's
22 your right. If you want to know what my ruling will be, you
23 can find out right now. I've had this case before, case
24 called *Hinnens v. O'Shea*. It's a similar fact pattern, it's
25 similar allegations, it's similar arguments. Of course it's

1 different, it's a different dispute and different facts, I
2 understand that, but it will give you pretty strong guidance
3 on where things are going at the Rule 12 stage. So I would
4 encourage you to read it. If you still think you need to
5 bring a Rule 12 motion, fine. I'll decide it promptly. But
6 we're not staying discovery in the meantime.

7 I want to make clear at the outset, no party is using
8 discovery in this case for any improper purpose. It's not a
9 weapon. It's not to delay matters. It's a tool to
10 investigate the parties' respective claims and defenses.
11 That's it. Nothing more. And as I indicated, I don't
12 expect there to be much need for that much discovery.

13 That said, I do expect in this case, as in most cases,
14 discovery will take a great deal of work, time, and effort
15 and expense. And as far as I'm concerned, that work begins
16 today. I'm removing the stay on discovery under Rule 26,
17 and you're free to begin discovery consistent with the
18 discussion we've had about the subpoenas.

19 My courtroom deputy will forward to each of you my
20 standard Rule 26(f) report. I expect you to meet and confer
21 in good faith, both with your respective clients and with
22 each other, and to agree on a discovery plan for the case.
23 We'll set a deadline for that submission before we adjourn.

24 In addition to working cooperatively among counsel and
25 each other, I do expect parties -- parties to sign that

1 document to evidence that you understand your discovery
2 obligations and commitments.

3 That takes me to my third item of business today.

4 This case obviously is in the early stages. We aren't
5 even at the deadline to answer, move, or otherwise respond
6 to a complaint. But it's clear to me from what I've seen
7 already that there's a lot of water under the bridge between
8 the parties to this case. At bottom the taxpayers of
9 Trumbull County should not see their elected officials
10 behaving like this; that is to say behaving like children.
11 I appreciate that there are very few models in our civic
12 discourse in our country today at any level of government
13 for how to have disagreements about matters of public
14 concern that are held deeply and in good faith. They are
15 important issues, and you may have very personal feelings
16 about them. And, again, I understand that there's very few
17 models today for how to address those in a constructive way
18 through the normal political process. I'm hard-pressed to
19 name any.

20 I want to say as well that I appreciate the case is at
21 the pleadings stage. Commissioner Frenchko makes
22 allegations; that's all they are, they're allegations. I
23 understand that there's multiple sides to this story for
24 every one of you on the defense side. So I don't take any
25 of the allegations as true, but if there's any kernel of

1 truth to anything alleged, the citizens of Trumbull County
2 deserve better from all of you.

3 So my message to you today is clear and it's simple.
4 You have to find a way now to resolve your differences. The
5 lawsuit can go on, that's fine. But my concern is that your
6 working relationship to the people to whom you are
7 accountable has broken down, and that is not acceptable, and
8 you have to find a way to repair those relationships. Even
9 though you might vigorously disagree with one another, and
10 even frankly really deep-down strongly dislike one another,
11 that's fine. There's nothing wrong with that. You still
12 have to work together. You all serve the same constituents.

13 Additionally, federal court is really not the best
14 forum for resolution of those issues, either on a personal
15 level or for the kinds of disputes that appear to be at
16 issue and to divide you. Certainly litigation has a place
17 in our society. It serves a very valuable role. I wouldn't
18 be here if I didn't believe that deep down, and I don't
19 think any of the lawyers would be here if they didn't
20 believe that deep down either.

21 The federal court is generally not good at a few
22 things. One is repairing relationships. Litigation tends
23 to make them worse, not better. And federal court is,
24 generally speaking, not a good place for government to carry
25 out its important vital functions.

1 So what comes next in the case as you'll see both from
2 the cell phone discussion we've had and the Rule 26(f)
3 report is a lot of time, effort, money, and distraction for
4 all of you. And we are just barely scratching the surface
5 of what you're about to get into in terms of motion
6 practice, discovery, and all the other disputes and
7 disagreements that come with litigation.

8 Based on what I've seen thus far, again, we're at the
9 very early stages, there's just allegations at this point, I
10 doubt very much unfortunately that there's an opportunity to
11 resolve this dispute in any meaningful way. But you're
12 about to engage in a process that has tremendous financial
13 costs to the public, to say nothing to the additional cost
14 to the public of seeing their elected officials engaged in
15 this sort of litigation and the potential for the
16 interference with the conduct of the public business. And I
17 have no doubt that under the best of circumstances, even if
18 you all got along and saw eye-to-eye on everything, that
19 conducting the business of the citizens of Trumbull County
20 is incredibly challenging and difficult. And this certainly
21 will not help. But I am ordering you today to make a
22 good-faith effort to resolve your dispute now before the
23 case gets out of hand and more expensive.

24 In my experience, both as a lawyer and now on the
25 bench, once parties start incurring costs in discovery and

1 litigation, you become entrenched in your positions. And
2 the costs often make resolution difficult or impossible. In
3 the *Hinners* case, for example, that case remains at the
4 Rule 12 stage. There was a motion to dismiss, I granted it
5 in part and denied it in part. And the costs in that case
6 are in the hundreds of thousands of dollars. There's been
7 no discovery.

8 So you need to make a good-faith effort at resolution
9 now. I am ordering you to mediation with the magistrate
10 judge in this case, Judge Thomas Parker. And I'm ordering
11 you to see him today. He's in this building downstairs.
12 And he's expecting you.

13 Again, I don't expect that you'll be able to resolve
14 this dispute, but I do expect you to make a good-faith
15 effort toward that end. If Judge Parker tells me that any
16 one of you have not participated in good faith and made that
17 effort, I will put on an order to show cause why I should
18 not sanction you. I want to be clear about that.

19 Judge Parker will tell you what he needs from you,
20 what he expects from you, and what timeframe. That's all up
21 to him. Anything he talks about with you is confidential.
22 I will only get reports that you have resolved the case or
23 you have not resolved the case, but I will also take from
24 him recommendations about scheduling matters.

25 So, for example, if after talking with Judge Parker

1 today you don't want to live under the deadlines for the
2 cell phone subpoenas that I indicated, if he recommends that
3 I adjust those deadlines, I will. Otherwise, those
4 deadlines stand. And that will be the case as long as
5 you're negotiating in good faith with him throughout the
6 life of this case, particularly in the early stages.

7 I do want to set a deadline for the answer -- the
8 deadline to answer, move, or otherwise plead.

9 Defense counsel, what's the current deadline based on
10 service?

11 MR. DOWNEY: I believe, Your Honor, it's
12 Tuesday of next week.

13 THE COURT: Does that deadline work for that,
14 or do you need a different deadline?

15 MR. DOWNEY: Your Honor, I would prefer to
16 extend that deadline if we could.

17 THE COURT: To what?

18 MR. DOWNEY: Another week would be great, Your
19 Honor.

20 MR. YOSOWITZ: Your Honor, this is Andrew
21 Yosowitz. I have the deadline as May 17th.

22 THE COURT: And does that deadline work for
23 you, Mr. Yosowitz?

24 MR. YOSOWITZ: Yeah. Any -- I can answer
25 quickly.

1 MR. DOWNEY: And, Your Honor, you mentioned
2 the *Hinners* case, which obviously I'm on that one as well,
3 and we do anticipate filing a motion for judgment on
4 pleadings, but not on all the claims, just on some of them.
5 So I did anticipate that the Court would want us to move
6 forward with discovery.

7 THE COURT: Fair enough. Thank you.

8 If May 17th works, does that work for you as well as a
9 deadline?

10 MR. DOWNEY: Yes, Your Honor.

11 THE COURT: That way we'll have one deadline
12 for everyone to try to keep things reasonably aligned and on
13 track for everyone.

14 I'll just note a couple things in that regard. This
15 is all contained in my civil standing order.

16 If you intend to file on May 17th a motion, I do
17 require an answer with that motion.

18 If any defendant intends to file a motion -- and
19 perhaps I was a little premature in setting that date -- I
20 do require all defendants to file one motion and join it. I
21 don't -- in other words -- want two, three, or more motions.
22 I have just found that that helps me stay on track and it
23 helps identify points of agreement and disagreement on the
24 defense side.

25 So if after conferring -- this will be the only

1 exception I make to my Judge Parker recommendation rule --
2 the defendants intend to file a motion and you need a little
3 bit of additional time to coordinate that filing with the
4 deadlines, that's fine. But otherwise I'm going to follow
5 Judge Parker's recommendations with respect to scheduling.

6 MR. DOWNEY: If I may, Your Honor.

7 THE COURT: Yes.

8 MR. DOWNEY: One other issue that I would like
9 to bring to the Court's attention is that you're absolutely
10 correct that this is a very public case, particularly in
11 Trumbull County where all folks reside. And currently there
12 is no response on the books on behalf of the folks who are
13 facing these allegations, my clients, Mr. Yosowitz's
14 clients.

15 And although I appreciate and understand the Court's
16 recommendation to send us into mediation with Magistrate
17 Judge Parker immediately, I do think, from my clients'
18 perspective, that they will wish to have a public document
19 filed in response to these allegations, both an answer and a
20 motion prior to -- hopefully to the Court's agreement to
21 engaging in a mediation process. And that is -- from my
22 perspective and the perspective of my clients -- very, very
23 important for their standing within the community based on
24 the allegations that have been made, Your Honor.

25 THE COURT: Well, you have a deadline for that

1 of May 17th. As I indicated, I doubt very much that you're
2 going to be able to resolve your differences in this case
3 with Judge Parker or without Judge Parker. I'd like you to
4 prove me wrong on that, but I'm not going to hold my breath
5 or hold out much hope. But, in any event, I'm not sure what
6 Judge Parker's prepared to do today or not do today with
7 you, but I think you can talk about all of that with him.

8 MR. DOWNEY: Thank you, Your Honor.

9 MR. MILLER-NOVAK: Your Honor, if I could have
10 just a little bit of clarification on your first -- I think
11 it might have been your second matter regarding discovery.

12 I understand that you have instructed me to subpoena
13 phone records by May 8th, and I intend to do so. And that
14 you've also essentially waived the Rule 26 kind-of stay on
15 discovery until after the conference.

16 So, just so I'm in understanding, you're ordering me
17 to subpoena documents from the phone carriers by the 8th,
18 but you're allowing us -- permitting us to engage
19 immediately in Rule 26 discovery at large, correct?

20 THE COURT: I'm ordering you by May 8th to
21 provide the notice required under Rule 45. So Rule 45
22 requires that before you serve a subpoena, you provide
23 notice to the defendants. The defendants may have
24 objections, they may not have objections. Frankly, they may
25 or may not have standing to object. If you have any

1 objections, we'll deal with those by May 12th. And then if
2 you are unable to resolve any objections, that's where I say
3 we'll convene the following week by Zoom or by phone and
4 address all of that to move things forward.

5 I think at this point, if you want to serve written
6 discovery requests, that's fine. Candidly, I've toyed with
7 the idea of whether it makes sense to require that before
8 the Rule 26(f) conference because I think it helps move
9 things forward. So if you want to serve, that's fine. I
10 trust that counsel and clients will cooperate in providing
11 reasonable extensions and the like. Again, not doing so for
12 any improper purpose and under the procedures we've outlined
13 in consultation with Judge Parker.

14 Additionally, you have initial disclosures to make.

15 The other deadline I wanted to set today, as I
16 indicated earlier, was the 26(f) report deadline. And I do
17 strongly encourage -- and in this case I'll require you to
18 make initial disclosures before having the 26(f) conference
19 because I think it will facilitate those discussions and
20 maybe eliminate much of the discovery that needs to be done.
21 As I indicated, I don't think it's that great in any event.
22 But subject to your schedules and your thoughts since
23 matters in the early days, and you know your clients and
24 records and things like that, I'd be looking at June 16th,
25 but that might be a little bit aggressive for getting a

1 report from you.

2 MR. FUDA: Judge, I want to make one
3 correction at this time. I am not the commissioner, I'm the
4 former commissioner.

5 THE COURT: Thank you.

6 MR. DOWNEY: And, Your Honor, if I may.

7 This is one of many cases that are currently pending,
8 and I didn't know if the Court was aware of the other
9 matters that are pending before Judge Pearson and Judge
10 Adams.

11 There's a significant amount of litigation involving
12 Trumbull County right now, and -- and attorneys have been --
13 at least one attorney's been conflicted out of the other
14 cases as they were proceeding on, and I think that from the
15 defense perspective, we wanted to be certain that the Court
16 is aware that that has complicated matters with respect to
17 the assignment and retention of counsel with respect to this
18 particular case.

19 In fact, typically I think with a TRO it would be sent
20 to a carrier, a carrier would review it, but a county
21 prosecutor would appear on behalf of the county before an
22 attorney could even consider retention. In this particular
23 case, I think the Trumbull County prosecutor was conflicted
24 out of doing anything like that. And so I did want to let
25 the Court know that, you know, we apologize that there was

1 no one present at the initial date, but there were
2 complicating matters that prevented that at the time, Your
3 Honor.

4 THE COURT: What are the other cases that are
5 pending?

6 MR. DOWNEY: Well, I have entered appearance
7 on behalf of the county in the *Gedeon* case, which is
8 currently before Judge Pearson. I was recently retained
9 with respect to the *Blair* case, which is currently before
10 Judge Adams. And I do believe that there are other cases of
11 which I am not a part of -- looks like *Cook versus Trumbull*
12 *County*, and I'm not certain of the judge; *Vivoda-Klotz*
13 *versus Trumbull County*, I'm not sure -- certain of the judge
14 assigned to that one. But there are numerous cases. And
15 because of that, it's been very complicated from a defense
16 perspective on how to move forward. I represent the county
17 in those cases. Commissioner Frenchko has her own
18 individual counsel in at least one of those cases, I think
19 two of them that I'm now entering in on. And, you know,
20 with this case, she's the plaintiff and, you know, those --
21 those issues I think have complicated matters for the
22 carrier.

23 And it's not often that I come up from Columbus to
24 northeast Ohio to represent folks. That's one of the
25 reasons that I am on this case.

1 THE COURT: You've answered one of the
2 questions I had when I looked at the counsel roster, so that
3 helps me understand that. I assume that none of the other
4 cases involve this set of operative facts, they involve
5 different disputes of one kind or another.

6 MR. DOWNEY: No, Your Honor. And I did my due
7 diligence prior to accepting the retention --

8 THE COURT: I ask not for your purposes but
9 for my mine. I trust you did, I don't doubt that. I just
10 assume that this is the only lawsuit involving this
11 transaction or occurrence as it were as opposed to like the
12 other cases don't factually overlap with these allegations.

13 MR. DOWNEY: Correct, Your Honor.

14 MR. MILLER-NOVAK: Your Honor, I don't know
15 that I entirely agree with that. I mean, we need to look
16 into it. And, you know, this is the first we learned today
17 of who was going to be representing the county, and we think
18 there could be potentially some -- some overlap because some
19 of the issues in the employment matters kind of relate some
20 of the tensions that you outlined earlier. And there is at
21 least one case that counsel here does represent the county
22 where Ms. Frenchko is named and is at the center of some
23 allegations against herself. And we're not prepared to
24 speak on that yet, and we don't want to speak out of turn,
25 but we need to get more information regarding that.

1 THE COURT: I think -- I understand your
2 position, and I don't doubt that you're both saying the same
3 thing from your respective seats as it were. My point is
4 really that you didn't check on the civil cover sheet that
5 there's any related cases. I don't trust that this case is
6 related in the meaning of the rules in that regard. And
7 that's all I'm trying to get at, and it sounds like this
8 case is not related. It doesn't mean that there's not
9 collateral consequences, both substantively or
10 representationally in other matters, and that might well be.
11 As far as I'm concerned, that's all the more reason for you
12 to get to see Judge Parker sooner rather than later. I only
13 have this one case, and I intend to push it forward. Again,
14 unless and until Judge Parker tells me to hold off and -- it
15 sounds like there's even more issues than these, and you all
16 have a lot of work to do to get through them.

17 Anything else we need to accomplish today?

18 MR. MILLER-NOVAK: No, Your Honor. I don't
19 believe so on our side.

20 MR. YOSOWITZ: Judge, I think we got a little
21 sidetracked. Did we set June 16th as the initial disclosure
22 date on behalf of Sergeant Ross and Wix? I'm okay with that
23 date --

24 THE COURT: June 16th was my date for the
25 submission of the 26(f) report, so the initial disclosures

1 would need to be a week or two before that.

2 MR. MILLER-NOVAK: Your Honor, I'm assuming
3 that there will be an order that's issued regarding all
4 these dates.

5 THE COURT: There will.

6 MR. MILLER-NOVAK: Okay.

7 THE COURT: Again, if Judge Parker recommends
8 a different date, I'm happy to move it at his
9 recommendation, but otherwise that's a few weeks off, so I
10 think you've got some time to roll up your sleeves and get
11 down to work.

12 MR. MILLER-NOVAK: Your Honor, can I ask you
13 one more question? I'm sorry.

14 You mentioned a case earlier that you wanted us to
15 look at. And I got O'Shea I think, but I think I missed the
16 first part.

17 THE COURT: *Hinners*.

18 MR. MILLER-NOVAK: *Hinners*?

19 THE COURT: H-I-N-N-E-R-S.

20 MR. MILLER-NOVAK: And I was right about
21 O'Shea, Your Honor?

22 THE COURT: Correct. Although if I remember
23 right, it's no longer technically the O'Shea. I think he's
24 out of the case.

25 MR. MILLER-NOVAK: Thank you.

1 MR. YOSOWITZ: Last thing, Your Honor. If the
2 record can reflect I've already e-mailed plaintiff's counsel
3 with the cell phone numbers for Sergeants Ross and Wix.

4 THE COURT: All right. Thank you.

5 All right. If there's nothing further, report to
6 Judge Parker before you leave, and we will move forward
7 accordingly.

8 (Proceedings concluded at 10:03 a.m.)
9
10

11 **C E R T I F I C A T E**
12

13 I certify that the foregoing is a correct transcript
14 of the record of proceedings in the above-entitled matter
15 prepared from my stenotype notes.

16 /s/ Gregory S. Mizanin October 4, 2023
17 GREGORY S. MIZANIN, RDR, CRR DATE
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